IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
MONDAY, THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE A.GOPAL REDDY
WRIT PETITION NO. 8434 of 2000

Between:

K.Chinna Ammulu, D/o.Nagaiah, aged about 23 years,
R/o.Padamatikona village(Kammapalle), Chinnamandem Mandal ,
Cuddapah District.

..... PETITIONER

AND

1. The Dist Collector, Cuddapah.
2. The Joint Collector, Cuddapah
3. The Revenue Divisional Officer, Cuddapah , Cuddapah District.
4. The Mandal Revenue Officer, Chinnamandem,
   Chinnamandem Mandal, Cuddapah District.
5. M.Parvathamma, W/o.Pulla Reddy, aged about 35 years,
   R/o. Padamatikona Village, Chinnamandem Mandal, Cuddapah
District.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus , declaring the order passed by the 1st respondent in his proceedings Roc.No.H3(A)/2495/96, dated 31-03-2000 confirming theorder of the second respondent passed in his proceedings Ref.H3(A)/2285/95, dated 13.03.1996 directing the 3rd respondent to re-notify the vacancy though the petitioner is fully qualified as per the guide lines as illegal, arbitrary and without jurisdiction and consequently set aside the above said orders and allow the writ petitioner to distribute the essential commodities to the cardholders of padmatikona Vuillage (Kammapalle) , Chinnamandem Mandal , Cuddapah District.

Counsel for the Petitioner: MR.G.DASARADHA RAMI REDDY

Counsel for the Respondents 1 to 4: GP for Civil Supplies.

Counsel for the Respondent No.5: MR.A.PRABHAKAR SARMA

The Court made the following:

ORAL ORDER:

Consequent on creation of a new fair price shop at Padamatikona village of Chinnamandem Mandal, Cuddapah District, a notification was issued calling upon applications from the eligible candidates for filling up of the vacancy on regular basis. In response to the said notification, four applications, including that of the petitioner and the fifth respondent, have been received by the Revenue Divisional Officer, Cuddapah. Among them, one candidate by name Smt. C. Sreelatha has not attended the interview and among the other three candidates, who have appeared for interview, the fifth respondent failed to produce date of birth and educational qualification certificates and unable to read Telugu newspaper and being non-resident, her application was discarded. Out of the remaining two candidates, the Revenue Divisional Officer, Cuddapah selected the petitioner as she has more solvent than the other candidates and having better qualifications.

Aggrieved by the appointment of the petitioner as fair price shop dealer, by discarding her application and not considering her case, the fifth respondent filed an appeal before the Joint Collector, Cuddapah, contending that the petitioner is under aged as per the Transfer Certificate produced which is the basis to assess her educational qualification, whereas the fifth respondent passed 7th class.

The Joint Collector, Cuddapah, after going through the grounds of appeal, held, that when once transfer certificate

of the petitioner has been taken as criteria towards the educational qualification, the date of birth recorded therein, has to be relied upon to see whether the petitioner is qualified to be appointed as fair price shop dealer in view of the age prescribed by the Government in memo No.18835/CS-/90-1, dated 22.03.1990 that the candidate should complete 18 years of age, and also held that no credence need be given to the certificate issued by the Mandal Revenue Officer, Chinnamandem showing that the petitioner is aged about 18 years and once she is under aged she cannot be appointed as fair price shop dealer. Since the fifth respondent, who filed the appeal, failed to produce the certificate evidencing her educational qualification, it was held, her application was rightly discarded and accordingly he directed the Revenue Divisional Officer, Cuddapah to re-notify the vacancy of fair price shop dealership by calling fresh applications and appoint a suitable candidate by strictly following the guidelines issued by the Government.

Both the fifth respondent and the petitioner filed revision before the District Collector, Cuddapah (First Respondent herein). The First Respondent herein after going through the record held that the order passed by the Joint Collector, Cuddapah, directing the Revenue Divisional Officer, Cuddapah, to re-notify the vacancy of fair price shop dealership is justified in view of the fact that the petitioner is under aged and not eligible to be appointed; whereas the

fifth respondent has not produced any certificate about her educational qualification and the other candidate who attended for interview is having more qualification than the respondent, and dismissed the revision.

The correctness of the said findings is now assailed in the present writ petition.

Learned counsel for the petitioner contends that the petitioner herein, who is appointed as fair price shop dealer basing upon the certificate issued by the Mandal Revenue Officer, Chinnamandem that she is aged 18 years, has completed 18 years of age during the pendency of the appeal as per the transfer certificate issued by the school authorities, and in view of the same, the Joint Collector, Cuddapah, ought not to have set aside the appointment of the petitioner. Since the petitioner has been distributing the essential commodities to the cardholders and she is now being qualified for the same the first respondent ought to have allowed the revision.

In fact, the petitioner, who was not initially qualified to be appointed, cannot have any claim for such appointment since she has not completed the age of 18 years as on the date of her making application. In view of the same, the Joint Collector, Cuddapah has rightly set aside the illegal appointment made by the Revenue Divisional Officer, Cuddapah. When the appointment itself is not legal on the date when it was made, even if she acquired the required age during the pendency of appeal, the same cannot be taken into consideration, as the same will amount to perpetuating the illegality through judicial process, such course the courts will not adopt. In view of the same, the order passed by the Joint Collector, Cuddapah as affirmed by the District Collector, Cuddapah in revision

will not suffer from any legal infirmities for exercise of certiorari jurisdiction.

Accordingly, the writ petition is dismissed. No costs.

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28th June, 2004.

***Nsr**

To

1. The District Collector, Cuddapah.
2. The Joint Collector, Cuddapah.
3. The Revenue Divisional Officer, Cuddapah, Cuddapah District.
4. The Mandal Revenue Officer, Chinnamandem, Chinnamandem Mandal,Cuddapah District.
5. Two CCs to G.P for Civil Supplies, High Court Buildings, Hyderabad (OUT)
6. Two CD Copies.